



DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

23 CFR Part 652

[Docket No. FHWA-2019-0018]

[RIN 2125-AF90]

Pedestrian and Bicycle Accommodations and Projects; Removal of Obsolete Regulation

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: Through this final rule FHWA will remove a regulation that has been superseded by legislation. We are removing sections related to pedestrian and bicycle accommodations and projects. The regulation is no longer necessary, given revisions to applicable provisions of title 23, United States Code (U.S.C.).

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document may be viewed online under the docket number noted above through the Federal eRulemaking portal at: <http://www.regulations.gov>. An electronic copy of this document may also be downloaded from the Office of the Federal Register's Web site at: <http://www.archives.gov/federal-register> and the Government Publishing Office's Web site at: <http://www.gpo.gov/fdsys>.

Background

Over time, various legislative changes have made 23 CFR part 652 obsolete. In addition, the design guidelines described in this regulation no longer constitute best practices, based on the most recent safety and multimodal network research. Therefore, this rulemaking will remove 23 CFR part 652 in its entirety.

This regulation, enacted on March 22, 1984, has been inconsistent with title 23 U.S.C. since the Intermodal Surface Transportation Efficiency Act (ISTEA) (Pub. L. 102-240, 105 Stat. 1914) was enacted on December 18, 1991. Subsequent surface transportation legislation and implementing regulations have rendered this regulation obsolete, including the National Highway System Designation Act of 1995 (Pub. L. 104-59, 109 Stat. 568); the Transportation Equity Act for the 21st Century of 1998 (Pub. L. 105-178, 112 Stat. 107); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005 (Pub. L. 109-59, 119 Stat. 1144); the Moving Ahead for Progress in the 21st Century Act (MAP-21) of 2012 (Pub. L. 112-141, 126 Stat. 405); and the Fixing America's Surface Transportation (FAST) Act of 2015 (Pub. L. 114-94, 129 Stat. 1312), as well as the Americans with Disabilities Act of 1990 (ADA) (Pub. L. 101-336, 104 Stat. 327). Safety and multimodal network research

leading to new planning and design guidelines and practices have added to the inconsistency between this regulation and current practices. The section-by-section analysis describes how each section of part 652 has been superseded.

Section-by-Section Analysis

§ 652.1 Purpose. This section is obsolete. Subsequent law provided broad flexibility to fund pedestrian and bicycle projects without the restrictions in part 652. See discussion of § 652.7 for additional information.

§ 652.3 Definitions. The definitions in this section are not needed because the regulation will be removed.

§ 652.5 Policy. This section is either obsolete or superseded by subsequent laws, regulations, and guidance. Current law in 23 U.S.C. 217 incorporates provisions in this section relating to pedestrian and bicyclist accommodation. The ADA and DOT's implementing regulation in 49 CFR part 27 incorporate accessibility requirements. Planning requirements in 23 U.S.C. 134 and 135 and 23 CFR parts 420 and 450 address issues related to pedestrian and bicycle accommodation, such as assessing current and anticipated traffic and traffic conflicts.

§ 652.7 Eligibility. This section is obsolete because ISTEA and subsequent surface transportation legislation authorized broad eligibility for pedestrian and bicycle projects through Federal highway funding programs including, but not limited to the following:

- Bicycle transportation and pedestrian walkways (23 U.S.C. 217);
- National Highway Performance Program (23 U.S.C. 119);

- Surface Transportation Block Grant Program (23 U.S.C. 133), including the Surface Transportation Program Set-Aside (23 U.S.C. 133(h));
- Highway Safety Improvement Program (23 U.S.C. 148);
- Congestion Mitigation and Air Quality Improvement Program (23 U.S.C. 149);
- Federal Tribal Transportation Program (23 U.S.C. 202);
- Federal Lands Transportation Program (23 U.S.C. 203);
- Federal Lands Access Program (23 U.S.C. 204); and
- Recreational Trails Program (23 U.S.C. 206).

§ 652.9 Federal participation. This section is obsolete because ISTEA and subsequent surface transportation legislation authorized broad eligibility for pedestrian and bicycle projects through Federal highway funding programs as described above. Pedestrian and bicycle projects are now subject to the requirements of the program under which they are funded (such as the minimum Federal share).

§ 652.11 Planning. This section is obsolete because ISTEA and subsequent surface transportation legislation incorporated planning provisions for pedestrian and bicycle projects in 23 U.S.C. 134 and 135, and implementing regulations in 23 CFR parts 420 and 450.

§ 652.13 Design and Construction Criteria.

§ 652.13(a). The American Association of State Highway and Transportation Officials' "Guide for the Development of New Bicycle Facilities, 1981" has been superseded by several revisions. Title 23, U.S.C. does not require design standards for

pedestrian and bicycle facilities. Section 109 stipulates design requirements for the National Highway System, which are implemented by 23 CFR part 625. Further, new research on pedestrian and bicycle planning, design, construction, and maintenance has led to newer practices for the safe and effective accommodation of pedestrians and bicyclists within the multimodal transportation network. The FHWA considers these documents and other resources when developing guidelines and best practices for pedestrian and bicycle facilities. These documents are available at https://www.fhwa.dot.gov/environment/bicycle_pedestrian/ and at https://safety.fhwa.dot.gov/ped_bike/.

§ 652.13(b). The ADA and DOT's implementing regulations superseded the requirements of § 652.13(b). Curb cut provisions are incorporated into 49 CFR 27.75. The FHWA has published additional guidance, available at https://www.fhwa.dot.gov/environment/bicycle_pedestrian/ and <https://www.fhwa.dot.gov/accessibility/>.

All substantive requirements and provisions of 23 CFR part 652 have been superseded by or incorporated into subsequent law, regulation, or guidance. Therefore, part 652 is obsolete and may be removed without adversely impacting the ability of FHWA or the State or local transportation departments to carry out the Federal-aid highway program.

Rulemaking Analyses and Notices

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the prior notice and opportunity for public comment requirements if it finds, for

good cause, that the requirements are impracticable, unnecessary, or contrary to the public interest. The issuance of this rule without prior notice and opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b)(3)(B). Seeking public comment is unnecessary. This action is merely a ministerial action to remove a regulation from the CFR that has been rendered obsolete by the passage of subsequent legislation, and the removal of this regulation will have no substantive impact. The FHWA believes that because the underlying statutory authority for this regulation has substantially changed since adopted, this final rule eliminates any confusion that may be caused by its existence in the CFR. For these reasons, FHWA does not anticipate receiving meaningful comments on a proposal to remove the regulation from the CFR and finds good cause to forgo notice and an opportunity for public comment.

The APA also allows agencies, upon finding of good cause, to make a rule effective immediately upon publication (5 U.S.C. 553(d)(3)). For the same reasons discussed above, the Agency believes good cause exists for making this action effective immediately upon publication.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), and DOT Regulatory Policies and Procedures

The FHWA has determined that this action does not constitute a significant regulatory action within the meaning of Executive Order (EO) 12866 or within the meaning of DOT regulatory policies and procedures. This is a ministerial action to

remove an obsolete regulation from the CFR. The removal of this regulation will have no substantive impact or economic impact; therefore, a full regulatory evaluation is not necessary.

This final rule is considered an EO 13771 deregulatory action. This final rule repeals a whole part from the Code of Federal Regulations that has been identified as outdated or unnecessary, thus reducing the Department's regulatory footprint. Cost savings associated with this deregulatory action are not quantifiable.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Public Law 96-354; 5 U.S.C. 601-612), FHWA has evaluated the effects of this final rule on small entities, such as local governments and businesses. This is a ministerial action to remove an obsolete regulation from the CFR. Administration of Federal-aid highway construction projects by small entities will not be affected by the deletion. Therefore, FHWA certifies that the action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The FHWA has determined that this rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Public Law 104-4, March 22, 1995, 109 Stat. 48). The actions in this final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$155 million or more in any 1 year (when adjusted for inflation) in 2014 dollars for either State, local, and Tribal governments in the aggregate, or by the private sector. In

addition, the definition of “Federal Mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

The FHWA has analyzed this final rule in accordance with the principles and criteria contained in EO 13132. Since is a ministerial action to remove an obsolete regulation from the CFR, FHWA has determined that this rule does not have federalism implications. The FHWA has also determined that this action does not preempt any State law or State regulation or affect the States’ ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing EO 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program. State and local governments are not directly affected by this action because it is a ministerial action to remove an obsolete regulation from the CFR.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The

FHWA has determined that this final rule does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this final rule for the purposes of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined that this action does not have any effect on the quality of the human and natural environment because it is a ministerial action to remove an obsolete regulation from the CFR.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this final rule under EO 13175 and believes that it will not have substantial direct effects on one or more Indian Tribes, does not impose substantial direct compliance costs on Indian Tribal governments, and does not preempt Tribal law. This rule does not impose any direct compliance requirements on Indian Tribal governments nor does it have any economic or other impacts on the viability of Indian Tribes. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this final rule under EO 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this action is not a significant energy action under the EO and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this rule under EO 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This action does not effect a taking of private property or otherwise have taking implications under EO 12630.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of EO 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under EO 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action will not cause an environmental risk to health or safety that may disproportionately affect children.

Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 652

Grant programs—transportation, Highways and roads.

Nicole R. Nason
Administrator
Federal Highway Administration

In consideration of the foregoing, FHWA amends 23 CFR chapter I as follows:

PART 652— [REMOVED AND RESERVED]

Under the authority of 23 U.S.C. 315, part 652, consisting of §§ 652.1 through 652.13, is removed and reserved.

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